

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-2095

United States Court of Appeals

FOR THE SECOND CIRCUIT

TIVIS TROIT HAWKINS, II.

Plaintiff-Appellant,

against

J. E. LaVALLEE, Superintendent Clinton Correctional Facility, Dannemora, New York,

T. J. O'CONNOR, Secretary, Institutional Media Review Committee, Clinton Correctional Facility, Dannemora, New York,

COMMISSIONER OF CORRECTION, Department of Correctional Services, Albany, New York.

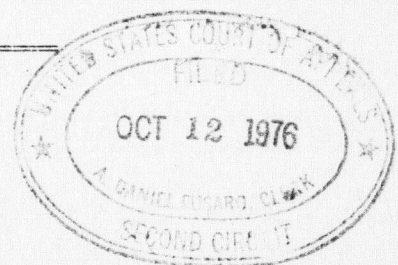
RONALD HADDAD, Administrative Assistant Program Services, Department of Correctional Services, Albany, New York

Defendants-Appellees.

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
ISSUES PRESENTED	2
STATEMENT OF THE CASE	3
A. The Proceedings Below	3
B. The Facts	4
ARGUMENT	12
A. THE MATERIALS SOUGHT BY APPELLANT ARE NOT OBSCENE AND ARE NOT PROHIBITED BY THE STATE'S OWN GUIDELINES	12
1. Corrections Policy and Guidelines Prohibit Only the Receipt of "Obscene" Material	12
2. The Publications Sought Do Not Fall Within the Constitutionally Limited Category of Materials Which May be Regulated as Obscene	15
B. FACILITY OFFICIALS AND STATE OFFICIALS HAVE VIOLATED CONSTITUTIONAL DUE PROCESS REQUIREMENTS BY ACTING ARBITRARILY AND IN NONCOMPLIANCE WITH STATE REGULATIONS	29
CONCLUSION	32

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
1. <u>Aikens v. Jenkins</u> , 534 F.2d 751 (7th Cir. 1976)	21
2. <u>Bloss v. Dykema</u> , 398 U.S. 278 (1970) <u>rev'g</u> <u>Dykema v. Bloss</u> , 17 Mich. App. 318, 169 N.W.2d 367 (1969)	23
3. <u>Blount v. Rizzi</u> , 400 U.S. 410 (1971)	31
4. <u>Burgin v. Henderson</u> , 536 F.2d 501 (2d Cir. 1976)	4
5. <u>Burgin v. South Carolina</u> , 404 U.S. 806 <u>rev'g State v. Burgin</u> , 255 S.C. 237, 178 S.E.2d 325 (1970)	23, 25
6. <u>Carpenter v. South Dakota</u> , 536 F.2d 759 (8th Cir. 1976)	21
7. <u>Carothers v. Follette</u> , 314 F. Supp. 1014 (S.D.N.Y. 1970)	21
8. <u>Fortune Society v. McGinnis</u> , 319 F. Supp. 901 (S.D.N.Y. 1970)	21, 31
9. <u>Frankos v. LaVallee</u> , 535 F.2d 1346 (2d Cir. 1976)	4
10. <u>Freedman v. Maryland</u> , 380 U.S. 51 (1965) ..	26
11. <u>Goodwin v. Oswald</u> , 462 F.2d 1237 (2d Cir. 1972)	21
12. <u>Hamling v. United States</u> , 418 U.S. 87 (1974)	26
13. <u>Huffman v. United States</u> , 502 F.2d 416 (D.C. Cir. 1974)	23
14. <u>Jackson v. Preiser</u> , Civil No. 1969-435, 1971-101, 1971-131, 1972-11, 1972-12, 1973-73 (W.D.N.Y. originally filed November 1969)	8, 13
15. <u>Jacobellis v. Ohio</u> , 373 U.S. 184 (1964) ...	16

<u>Cases</u>	<u>Page</u>
16. <u>Jacobs v. Board of School Commissioners</u> , 490 F.2d 601 (7th Cir. 1974)	14, 15
17. <u>Jenkins v. Georgia</u> , 418 U.S. 153 (1974)	16, 25 26, 27
18. <u>LaReau v. MacDougall</u> , 473 F.2d 974 (2d Cir. 1972), <u>cert. denied</u> , 414 U.S. 878 (1973)	30
19. <u>Mawhinney v. Henderson</u> , No. 76-2028 (2d Cir. Aug. 30, 1972)	4
20. <u>Miller v. California</u> , 413 U.S. 15 (1973)	14, 15 16, 17 18, 20 21, 22 23, 25 26, 27 28
21. <u>Morales v. Schmidt</u> , 494 F.2d 85 (7th Cir. 1974)	21
22. <u>Morgan v. LaVallee</u> , 526 F.2d 221 (2d Cir. 1976)	4
23. <u>Nader v. Nuclear Regulatory Commission</u> , 513 F.2d 1045 (D.C. Cir. 1975)	29
24. <u>Nitzberg v. Parks</u> , 525 F.2d 378 (4th Cir. 1975)	31
25. <u>Paul v. United States</u> , 371 U.S. 245 (1963)	29
26. <u>People v. Heller</u> , 33 N.Y.2d 314, 325 N.Y. S.2d 601, 307 N.E. 2d 805 (1973)	17
27. <u>Procunier v. Martinez</u> , 416 U.S. 396 (1974)	21
28. <u>Roth v. United States</u> , 354 U.S. 508 (1957)	28
29. <u>Service v. Dulles</u> , 354 U.S. 363 (1959) ...	29
30. <u>Sharp v. Sigler</u> , 408 F.2d 966 (8th Cir. 1969)	30

<u>Cases</u>	<u>Page</u>
31. <u>Stanley v. Georgia</u> , 394 U.S. 557 (1964)	28 ,29
32. <u>State v. J-R Distributor, Inc.</u> , 80 Wash. 2d 584, 512 P.2d 1049 (1973) (en banc) <u>cert. denied</u> 418 U.S. 949 (1974)	23
33. <u>State v. Shreveport News Agency, Inc.</u> , 287 So.2d 464 (La. 1973), <u>cert. denied</u> , U.S.	20
34. <u>State v. Wedelstedt</u> , 213 N.W.2d 652 (Iowa 1973)	20
35. <u>Stroud v. State</u> , 300 N.E.2d 100 (Ind. 1973)	20
36. <u>United States v. Friedman</u> , 506 F.2d 511 (8th Cir.), <u>cert. denied</u> , 421 U.S. 1004 (1975)	26
37. <u>United States v. Groner</u> , 494 F.2d 499 (5th Cir.), <u>cert. denied</u> , 419 U.S. 1010 (1974)	26
38. <u>United States v. Palladino</u> , 490 F.2d 499 (1st Cir. 1974)	23
39. <u>United States v. 12 200-Ft. Reels of Film</u> , 413 U.S. 123 (1973)	26
40. <u>United States v. Womack</u> , 509 F.2d 368 (D.C. Cir. 1974), <u>cert. denied</u> , 422 U.S. 1022 (1975)	26
41. <u>Vitarelli v. Seaton</u> , 359 U.S. 535 (1957)	29
42. <u>Wilkinson v. Skinner</u> , 462 F.2d 670 (2d Cir. 1972)	21

Statutes and Regulations

Page

1. 7 N.Y.C.R.R. §§ 250-270	10
2. N.Y. Penal Law § 235.00(1) (McKinney 1974)	14, 19
3. 28 U.S.C. § 1343	1, 3
4. 42 U.S.C. § 1983	1, 3

Other Authorities

1. Ibrahim, "Deviant Sexual Behavior in Men's Prisons," 20 <u>Crime and Delinquency</u> 38 (1974)	13
2. Note, "Community Standards, Class Actions, and Obscenity Under <u>Miller v. California</u> ," 88 Harv.L.Rev. 1838 (1975)	22

PRELIMINARY STATEMENT

Plaintiff-appellant, Tivis Hawkins II, appeals from a decision and order of United States District Judge, Hon. Edmund Port, for the Northern District of New York, denying declaratory and injunctive relief and damages in an action brought pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343 for violations of First Amendment and Fourteenth Amendment rights by correctional officials in denying Hawkins magazines and photographs. This decision is unreported and appears in the Record at p. 56. For the convenience of the Court, a copy of the decision is appended to this Brief (B-1).*

* References to the Addendum contained in this brief will be preceded by the letter "A" and references to the Appendix will be preceded by the letter "B."

ISSUES PRESENTED

1. May state corrections officials censor, as "obscene," materials depicting nude and semi-nude females not engaged in sexual conduct where similar materials have previously been approved for this particular inmate as not obscene and where the applicable state list of approved literature contains several magazines of "soft-core" pornography?
2. May state corrections officials censor, as "obscene," materials depicting nude and semi-nude females not engaged in sexual conduct where such materials do not meet the constitutional test of "patent offensiveness" and where the state regulation does not "specifically define" conduct, depictions of which are prohibited?
3. Do censorship and prior restraint which fail to comport with the state's own minimal procedural safeguards meet constitutional due process standards?

STATEMENT OF THE CASE

A. The Proceedings Below

Plaintiff-appellant, Tivis Hawkins II, an inmate of New York State Clinton Correctional Facility, filed a complaint against the Superintendent of Clinton Correctional Facility, the Secretary of the Institutional Media Review Committee, the New York State Commissioner of Correction, and an Administrative Assistant of the New York State Department of Correctional Services, seeking declaratory and injunctive relief and damages, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343, for violation of his First and Fourteenth Amendment rights through application of mail censorship guidelines. Hawkins alleges that the guidelines have been applied in derogation of his substantive First Amendment rights and that the administrative actions in question are defective for failure to provide due process.

The complaint and motion for leave to proceed in forma pauperis were received by the Clerk of the Court for the Northern District on April 2, 1975.

While granting Hawkins leave to proceed in forma pauperis, the lower court "denied and dismissed" the complaint, holding that the materials received by Hawkins in the past, allegedly of the exact nature as the materials withheld, were "hard-core" pornography not within the protection of the

First Amendment. The lower court found that the materials were rejected on the ground that they were entirely without redeeming social value, sufficient reason for rejection under Guideline 2 of Administrative Bulletin #60.* The lower court stated that whether the Guideline prohibited material appealing to prurient interest was not a critical factor. The lower court also found that Hawkins had exhausted his administrative remedies but did not determine whether or not exhaustion was necessary. The district court did not have the complaint served on defendants and did not hold a hearing.** The record does contain, however, a considerable amount of documentary evidence submitted by Hawkins as exhibits attached to his complaint. (Documents cited in this brief have been reproduced in the appendix for the convenience of this Court.)

B. The Facts

Tivis Hawkins II has ordered in the past and wishes to continue to order art magazines containing semi-nude pictures of female models and nude and semi-nude photographs.

* "Guidelines and Procedures Governing the Receipt and Review of Literature and Related Materials for Inmates," Administrative Bulletin #60, reproduced at A-3 et seq.

** This practice of determining pro se prisoner claims without an answer or a hearing has been criticized by this Court. Mawhinney v. Henderson, No. 76-2028 (2d Cir. Aug. 30, 1976); Burgin v. Henderson, 536 F.2d 501 at 502 (2d Cir. 1976); Frankos v. LaVallee, 535 F.2d 1346 at 1347 (2d Cir. 1976).

He has ordered several issues of one particular publication, "Leg Art," to have in his cell.*

In January 1974, 80 photographs ordered by Hawkins arrived at Clinton and he was notified by transmittal of a blue Institutional Media Review Committee (IMRC) slip that the photographs would not be sent to him because they were violative of Guideline 2 of Administrative Bulletin #60** in that they were "entirely without redeeming social value." The IMRC sent the photographs to the Departmental Media Review Committee (DMRC) in Albany which subsequently rejected the material: "Rejected, violation of Guideline 2. Appeals

* Regulations of the correctional facility prohibit inmates from lending, giving, or selling personal possessions including magazines to other inmates.

** The policy statement contained in the bulletin provides that "In [some] cases some censorship or prior restraint of inflammatory, obscene or disruptive literature is necessary to deter unrest, violence, and maladjustment." The bulletin also provides a guideline definition of obscenity:

"2. In general, publications which are utterly without redeeming social value, or which clearly depict acts involving necrophilia, masochism, sadism, bestiality, or unnatural preoccupation with excrement, are not acceptable. Otherwise, literature dealing with the subject of sex is to be considered appropriate."

See A-4.

to prurient interest in sex, without redeeming social value."

(B-11) Pursuant to correctional services procedure, the material was returned to Clinton. Clinton personnel subsequently notified Hawkins that the material was lost. He attempted to file a lost property claim but was prevented from doing so. In October 1974, Hawkins wrote to correctional services officials in Albany about the situation. The response to Hawkins documented the return of the material to Clinton and stated: "Clearly Clinton should process your claim, and to that end a copy of this letter to Clinton will serve to so effect such action." (B-14) The record does not reflect any resolution of this situation.

Following the January 1974 rejection, correspondence concerning the censorship of Hawkins' mail continued between Hawkins and various administrative personnel at the Department of Correctional Services. On March 25, 1974, Hawkins wrote to the Commissioner stating that the magazines and pictures were sought by him to nurture his normal heterosexual interests while incarcerated in a "breeding ground for homosexuality." (B-4, 5) He observed that others were receiving similar materials and indicated that he ordered this material frequently "because we are not allowed to give to another inmate personal property, and, one gets tired of looking at the same thing all the time." (B-5)

An Administrative Assistant answered Hawkins' letter

on April 1, 1974, stating: "The photographs in question included exposures of female genitalia which is considered to violate guideline #2." (B-6) In May 1974, this same official wrote to Hawkins refusing his request for a copy of Guideline 2 because it is "in the [Clinton] library." (B-7)

Hawkins responded quoting the guideline in full and questioning the use of "appeals to prurient interest" as a criterion for Guideline 2. The official responded in turn by chiding Hawkins for inaccurate quotation and arguing that Hawkins had "left out" the Guideline 2 reference to "prurient interest."* Apparently, no inquiry was made to see whether

* Apparently, Guideline 2 was amended in February 1973 by addition of the underlined language:

"In general, publications which appeal to prurient interests and which are utterly without redeeming social value, or which clearly depict acts involving necrophilia, masochism, sadism, bestiality, or unnatural preoccupation with excrement, are not acceptable. Otherwise, literature dealing with the subject of sex is to be considered appropriate."

The amendment was disclosed in a hearing in Jackson v. Preiser, Civil Nos. 1969-435, 1971-101, 1971-131, 1972-11, 1972-12, 1972-23 (W.D.N.Y., originally filed November 1969).

The record indicates that the "amended" version was never made available to Hawkins. The Attorney General's office has supplied counsel with Administrative Bulletin #60 dated May 30, 1972, the original version. The Department of Correctional Services was uncooperative and unresponsive, but ultimately counsel received the original version and the approved literature list on October 5, 1976, seven days before this Brief was due.

the Clinton facility had a copy of the guideline as recently amended. Nor did the corrections official inform Hawkins of the amendment, despite his statement of corrections' position: "[T]he interjection of prurient interest, which is stated in the guideline, is an important consideration when reviewing photographs such as the ones mentioned in your letter."
(B-8)

On January 15, 1975, Hawkins was notified that Leg Art #3 and Leg Art #4, which allegedly arrived at Clinton in early January, had been rejected by the IMRC. (See, e.g., B-13.) Hawkins had not been notified that the material had been received at the institution, despite a requirement in Administrative Bulletin #60 that inmates be so informed.* Since Hawkins was not informed that a review by the IMRC was to take place, he was not given the opportunity to present a written statement to the IMRC and hence the facility

* Administrative Bulletin #60 sets forth the following procedural requirement for the IMRC to follow:

"Initially, inmates will be advised in writing of such review so that they will be informed of the reason for delay in the receipt of their literature. Inmates may be invited to submit a written statement to the facility committee in explanation of their desire for the literature." (Emphasis added.)

See A-6.

decision was not made according to the procedure mandated by the Department of Correctional Services.*

The two issues of Leg Art were forwarded to Albany for review by the DMRC on January 22, 1975.** The DMRC rejected the material on February 4, 1975. The IMRC's reason for rejection of both magazines was "Prurient interest in sex with no redeeming social value." (B-13) The DMRC deemed one issue "Prurient interest in sex with no redeeming social values," while the other decision form was marked "Clinton Media Review -- Rejected" in the space for "Staff Assistant Recommendation and Justification" and "Albany Media Review - Rejected" in the space provided for "Department Committee-- Final Determination." (B-12)

* Administrative Bulletin #60 provides in pertinent part:

"The facility committee will consider the inmate's literature, written statement and other pertinent information. Subsequently, the committee will issue a decision which shall be subject to approval by the Superintendent."

See A-6.

** The IMRC blue rejection slip informs the inmate that six to eight weeks should be allowed for return of the material. This is another example of Clinton's procedures falling short of the state policy which mandates:

"The entire media review procedure must be exercised within a period of time not to exceed six weeks from the date the literature is received into the facility. That is to say the entire review process, from facility to Albany, to facility, must be complete before expiration of said six weeks period." (Emphasis added.)

On February 18, 1975, a photographer, one "Maylsayls," sent to Hawkins by registered mail his order of photographs, Set #11. Hawkins received some of the photographs on February 21, 1975. He was not, however, notified at that time that some of the photographs were being held by the IMRC; at the time the complaint was filed Hawkins still had not been so notified.* On March 7, 1975, Hawkins received rejection slips for two sets of photographs, one for Set #11 from Maylsayls and one for photographs from "Monique," another photographer from whom he has purchased in the past. He wrote the same day to Clinton's Deputy Superintendent to complain about the holding of his mail without the notification required by Administrative Bulletin #60.** (B-9, 10) Clinton's response indicated that two weeks were required to process all news media at Clinton and that "All residents are notified of rejected material only by the blue rejection slip. One notice is proven to be all the notice that is necessary." (B-15)

* The record contains a letter from Hawkins to the lower court indicating that the facility officials have continued rejecting his mail, including material previously approved. (B-16)

** This letter makes reference to an interview of Hawkins by Superintendent LaVallee at which time LaVallee voiced suspicions that Hawkins was selling or bartering his magazines. Hawkins apparently has not been disciplined pursuant to 7 N.Y.C.R.R. Pts. 250 through 270, which deal with disciplinary procedures for implementing standards of inmate behavior.

Hawkins requested Administrative Bulletin #60 at the prison library on March 16, 1975, and was given the May 30, 1972 version. The librarian agreed with Hawkins that the "prurient interest" language was not contained in Guideline 2 but added that nonetheless it was part of the rule. On March 20, 1975, Hawkins received Leg Art #2 and Leg Art #20 and four of twelve photos which had arrived at the institution two weeks earlier. Again, no notification was given as to the eight photos which were being held.

Hawkins signed his complaint in this action on March 31, 1975, and it was received by the court clerk on April 2, 1975.

The Record establishes that Hawkins was allowed to receive numerous photographs and 17 Leg Art issues which depict in black and white nude and semi-nude females not engaged in sexual conduct. Some pictures expose the pubic area. Suddenly, in 1974, the facility began to delay Hawkins' mail and to reject this very same material as "obscene" when there had been no change in Hawkins' evaluation or in corrections guidelines. Other inmates were allowed sexual material including soft-core pornography on the state approved literature list (A-9) which contains explicit displays of female genitalia using color, close-up camera technique and poses of touching. The delays and rejections on the pretext of obscenity have all been approved by the DMRC which has disregarded IMRC violations of state guidelines.

ARGUMENT

A. THE MATERIALS SOUGHT BY APPELLANT ARE NOT OBSCENE AND ARE NOT PROHIBITED BY THE STATE'S OWN GUIDELINES

The Department of Correctional Services prohibits the receipt by inmates of "obscene" material. The magazines and photographs which were denied to Hawkins are clearly not obscene as a matter of law and therefore the actions of the facility officials in rejecting the materials and the actions of the state officials in affirming the rejections violated his First and Fourteenth Amendment rights.

1. Corrections Policy and Guidelines Prohibit Only the Receipt of "Obscene" Material

In the realm of sexually-oriented material, New York State has chosen to regulate only the possession of obscene materials by inmates of correctional facilities:

"Departmental policy is to allow access by inmates to literature and related materials for either program or private individual use. Accordingly, inmates shall be allowed to subscribe to or receive from authorized correspondents a wide range of books, magazines and newspapers.
. . . .

"There are, however, some inmates whose emotional instability and anti-social attitudes are such that access to certain material may lead to individual behavior or behavior by groups of inmates which threatens the safety and security of the institution . . . and which deters the

operation of a therapeutic program. In such cases some censorship or prior restraint of inflammatory, obscene or disruptive literature is necessary to deter unrest, violence, and maladjustment."* Administrative Bulletin #60 (emphasis added).

Administrative Bulletin #60 provides for the establishment of a list of publications which will be allowed in facilities without review. (A-8) The DMRC, pursuant to these provisions, has implicitly recognized that the guidelines permit what is generally known as "soft-core" pornography by including on this list of publications such magazines as: "Club," "Hustler," "Oui" and "Playboy."** (A-9 to A-18) The IMRC has allowed Hawkins photos and Leg Arts except for arbitrary incidents of censorship.

* Former Corrections Commissioner Elwin testified at a hearing in Jackson v. Preiser, supra, that Guideline 2 of Administrative Bulletin #60 "is supposed to reflect what is illegal under law." Memorandum of Law, dated April 8, 1974, citing the Record at 90-92.

"Inflammatory" and "disruptive" refer to political, racial and religious materials which are regulated by other guidelines not at issue in this case.

** Experts in legal, medical and academic fields have demonstrated an increasing awareness of the problem of homosexuality in correctional institutions. Promotion of continuing identification with the sexual norms of society through communication with the "outside world" has been advocated as one means of alleviating homosexual activity by inmates normally heterosexual. See, e.g., Ibrahim, "Deviant Sexual Behavior in Men's Prisons," 20 Crime and Delinquency 38 (1974) and works cited therein.

Guideline 2 of Administrative Bulletin #60 specifies certain sexual conduct, namely, necrophilia, masochism, sadism, bestiality or unnatural preoccupation with excrement, the depiction or representation of which may result in rejection. This conduct parallels that proscribed as "obscene" in N.Y. Penal Law § 235.00(1) (McKinney 1974), which regulates the exhibition and distribution of obscene material.

Thus, the actions of the facility officials and the state officials in rejecting material, which does not depict any of the acts or conduct mentioned above, exceeds the regulation authorized by the Department of Correctional Services' own policy and guidelines defined and limited by New York obscenity law. "Obscenity" in N.Y. Penal Law and as construed by New York State courts is the same as "obscenity" defined by the Supreme Court in Miller v. California, 413 U.S. 15 (1973). Compare People v. Heller, 33 N.Y.2d 314 (1973), and N.Y. Penal Law § 235.00(1) (as amended 1974) with Miller, supra at 25.

In an analogous situation, the Seventh Circuit held that the constitutionality of a school board regulation banning "obscene" material in high schools must turn on whether the proviso contains "the specific definition of sexual conduct the description of which is prohibited as now required for a valid law under Miller [citation omitted]." Jacobs v. Board of School Commissioners, 490 F.2d

601, 609 (7th Cir. 1974), vacated as moot, 420 U.S. 128 (1975).

2. The Publications Sought Do Not
Fall Within the Constitutionally
Limited Category of Materials
Which May be Regulated as Obscene

In defining "obscenity," the Supreme Court has established "concrete guidelines to isolate 'hard core' pornography from expression protected by the First Amendment" (413 U.S. at 25):

"(a) whether 'the average person, applying contemporary community standards' would find the work, taken as a whole, appeals to the prurient interest [citations omitted];

"(b) whether the work depicts or describes, in a patently offensive way sexual conduct specifically defined by the applicable state law; and

"(c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value."

Chief Justice Burger, writing for the Miller majority, cited as examples of valid state regulation Oregon and Hawaii provisions "directed at depiction of depiction of defined physical conduct, as opposed to expression." (Emphasis supplied.) 413 U.S. at 25, n.6. The Supreme Court provided examples of material that would meet standard (b), the constitutionally limited category of material potentially subject to regulation (413 U.S. at 26):

"(a) Patently offensive representation or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

"(b) Patently offensive representation or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals."

The lower court accepted the contention of Hawkins that the materials rejected by the IMRC and DMRC were of the exact nature as those submitted by Hawkins as Exhibits M and N. See Record at 27. Despite the fact that these exhibits contain photographs and an issue of "Leg Art,"* previously approved by facility officials as non-obscene under Administrative Bulletin #60, the lower court found them "obscene" applying Miller standards.

Accepting as did the lower court the contention that the exhibits of photographs and pictorial magazines in the record are fair and accurate representations of the material rejected, this Court must make "an independent constitutional judgment on the facts of the case as to whether the material involved is constitutionally protected." Jacobellis v. Ohio, 378 U.S. 184 at 190 (1964); see also Jenkins v. Georgia, 418 U.S. 153, 160 (1974). This requires

* "Leg Art" has never been the subject of an obscenity prosecution by state or federal authorities.

a determination of whether the materials in Exhibits M and N fall within the narrowly circumscribed class of unprotected material described by the Miller court as "hard-core" pornographic depiction of sexual conduct and whether this material meets all three Miller standards, which constitute a conjunctive test.

The materials in question are black-and-white photographs of nude or semi-nude female models (one model per picture) and magazines of black-and-white pictures of female models, some fully clothed and others in various states of undress (one model per picture).

Applying standard (a) from the Miller case, we submit that these materials are such that the average person applying contemporary community* standards could not find them, taken as a whole, appealing to the prurient interest.

The crux of the unlawfulness in the administrative actions in question, however, is its failure to comport with

* The most logical "community" to be applied in this case is the correctional facility itself by virtue of its function as an isolated environment. In this community of all-male adults the material in question is certainly within community standards. The only other possibly relevant community is New York State. See People v. Heller, 33 N.Y.2d 314, 352 N.Y.S.2d 601, 307 N.E.2d 805 (1973).

section (b) of the Miller standards: "whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law." We submit that the administrative action is deficient (1) because the material in question does not depict "patently offensive" conduct and (2) because it does not depict conduct specifically defined in the policy and guidelines.

In implementing the administrative policy allowing censorship or prior restraint of obscene materials in some cases of emotionally unstable and anti-social inmates, the correction guidelines attempt to specifically define obscene material in Guideline 2:

"In general, publications which are utterly without redeeming social value, or which clearly depict acts involving necrophilia, masochism, sadism, bestiality, or unnatural preoccupation with excrement, are not acceptable. Otherwise, literature dealing with the subject of sex is to be considered appropriate."*

The "acts" described in the guideline are consistent with the Supreme Court examples of "patently offensive representation or descriptions of ultimate sexual acts,

* This guideline was apparently amended in 1973. See footnote p. 7 supra. The amended guideline was never provided to Hawkins despite his numerous requests. Other than showing the attitude of bad faith of officials in implementing the censorship involved, we argue that the amendment cannot affect the outcome of this case, because the amendment was never provided and because the additional language does not specifically define patently offensive depictions of sexual conduct.

normal or perverted, actual or simulated" and "masturbation, excretory functions, and lewd exhibition of genitals."

Furthermore, as noted at p. 4 supra, these "acts" are included in the definition of "obscenity" in N.Y. Penal Law § 235.00(1) (A-1)

Yet, the material in question was rejected despite the fact that it does not depict any of the "acts" specifically set forth in Administrative Bulletin #60, the corrections' guideline for determination of obscenity.

Absent justification for rejection in the list of acts in Guideline 2, the correctional facility has applied the phrase "utterly without redeeming social value" to exclude material which includes in any part "exposure of female genitalia."* The guideline has been applied so that "utterly without redeeming social value" is read as a disjunctive category of material which is unprotected. This is an improper use of the phrase, which can hardly be said to specifically define sexual conduct and which has been applied arbitrarily by facility and state officials to censor protected expression.

* James Howser, Administrative Assistant, Department of Correctional Services (predecessor to Ronald Haddad, a named defendant) wrote to Hawkins: "The photographs in question included exposure of female genitalia which is considered to violate guideline #2." (B-6, B-8)

Prior to Miller, "utterly without redeeming social value" was an element of obscenity which was to be proved once the material or work was found to depict in a patently offensive way certain sexual conduct. Thus, the test "utterly without redeeming social value" had to be met after a finding that patently offensive material was present. In other words, material which was arguably unprotected due to its content was found to be within the area of First Amendment expression if it was found to have redeeming social value. The phrase "without redeeming social value" has never been used to describe a separate category of obscene material and Miller certainly does not allow its use as a specific definition of sexual conduct subject to censorship. Cf. Stroud v. State, 300 N.E.2d 100, 26 Ind. 58 (1973); State v. Shreveport News Agency Inc., 287 So. 2d 464 (La. 1973), cert. denied ___ U.S. ___; and State v. Wedelstedt, 213 N.W.2d 652 (Iowa 1973).

The only possible argument that this material is "obscene" must rest on its depiction of female genitalia and even then such censorship is permissible only if the depiction rises to the level of "lewd exhibition of the genitals" and such exhibition is specifically defined in the state law or regulation in question. The regulation here, Administrative Bulletin #60 and Guideline 2 in particular,

does not specify "lewd exhibition of genitalia" as proscribed. Hence the state has not specifically defined such material as regulable and Miller standard (b) is not met by the actions of the facility and state officials pursuant to the regulation as written.

Furthermore, regulation of material which is "utterly without redeeming value" is overbroad. The Seventh Circuit has recently considered statewide regulations for censorship of literature by correction officials. See Aikens v. Jenkins, 534 F.2d 751 (7th Cir. 1976).^{*} In that case, the court, because the regulations had never been applied or interpreted, considered whether or not the regulations could be saved from a determination of overbreadth. The court found such construction inappropriate since the local prison officials did not know that the state regulations existed and had applied local policies to exclude legitimate

^{*} The Aikens court found that the regulation which per se prohibited nudity was invalid using the Procunier v. Martinez, 416 U.S. 396 (1974) test: The regulation "prohibits far more than is necessary for the protection of any substantial governmental interests. . . ." 534 F.2d at 756. See also Morgan v. LaVallee, 526 F.2d 221 (2d Cir. 1976); Morales v. Schmidt, 494 F.2d 85 (7th Cir. 1974); Goodwin v. Oswald, 462 F.2d 1237, 1244 (2d Cir. 1972); Wilkinson v. Skinner, 462 F.2d 670, 683 n.5; Fortune Society v. McGinnis, 319 F. Supp. 901 (S.D.N.Y. 1970); Carothers v. Follette, 314 F. Supp. 1014 (S.D.N.Y. 1970). But see Carpenter v. South Dakota, 536 F.2d 759 (8th Cir. 1976).

expression. Id. at 754; see also Note, "Community Standards, Class Actions, and Obscenity Under Miller v. California," 88 Harv. L. Rev. 1838 at 1849 (1975). Additionally, the court considered the chilling effect of the regulation which allowed censors to restrict protected material and inhibited inmates from ordering material.

We contend that in this case the Record clearly indicates that the construction of the guidelines and the application of the guidelines both by facility and state officials have not brought the administrative action within First Amendment requirements.* Pursuant to Guideline 2 the correctional officials arbitrarily may (and do) censor any exposure of female genitalia. Miller allows restriction only of depiction of lewd exhibition of genitals. In light of Miller's continual reference to depiction or representation of sexual conduct as opposed to depiction or representation of sexual expression, it is clear that more than mere exposure of female genitals** is required before the material rises to the level of patently offensive lewdness.

* Clearly valid construction would require that the "without redeeming social value" criterion be used conjunctively with the list of specific conduct.

** "Genitals" refers to "sexual reproductive organs."

Courts since Miller have focused on the conduct-expression distinction as the hard-core pornography - soft-core pornography test in considering whether applications of obscenity statutes are within substantive constitutional limits. In Huffman v. United States, 502 F.2d 419 (D.C. Cir. 1974), the court reversed an obscenity conviction where the trial court had not focused the jury's determination of "patent offensiveness" on conduct. Id. at 423 n.12. The First Circuit similarly reversed a conviction in a case involving pictures of males who were arguably "contemplating sexual conduct" but where "[n]o sexual congress nor any of the other forbidden acts" were depicted. United States v. Palladino, 490 F.2d 499 at 501 (1st Cir. 1974). See State v. J-R Distributors, Inc., 82 Wash. 2d 584, 512 P.2d 1049 (1973) (en banc), cert. denied, 418 U.S. 949 (1974). Even prior to Miller, the Supreme Court had implemented such a conduct-expression distinction. See, e.g., Burgin v. South Carolina, 404 U.S. 806 (1971), rev'g State v. Burgin, 255 S.C. 237, 178 S.E.2d 325 (1970); Bloss v. Dykema, 398 U.S. 278 (1970), rev'g Dykema v. Bloss, 17 Mich. App. 318, 169 N.W.2d 367 (1969).*

* Both Burgin and Bloss involved material similar to but more explicit than the material to be considered by this Court. The magazines in these two cases depicted nude and semi-nude females wearing garter belts, hose, or transparent material. Poses included positions with legs spread, pubic hair and external genital organs visible. The pictures were in color and the camera focus was in some instances on the genital area. See descriptions of magazines, 178 S.E.2d at 325, 169 N.W.2d at 373.

We submit that this category of "patently offensive lewd exhibition of genitals" is restricted to instances of manipulation or touching by the model photographed or by another, depiction of the female genitals in proximity with the genitals of a male or of a second female, or depiction of genitals with some electronic or mechanical device.* In other words, lewd exhibition of female genitals must suggest some conduct.

Even casual observation of the pictures in question reveals that most of the pictures do not expose the female reproductive organs. The models appear in each picture in full form and the emphasis of the publications is on female legs. Some of the pictures do reveal pubic hair, which is not genitalia. Display of pubic hair in contemporary publications is not confined to "hard-core" pornography, but rather is visible even on the covers of various "soft-core" magazines on public display at the local newsstand and drugstore.

Furthermore, even where there is arguably exposure of genitalia in the magazines in question, the reproductive

* Hawkins was told at one point by an employee or official of the correctional facility that only material depicting "sexual acts" was proscribed. (B-4)

organs are not easily distinguished and are not the specific subject or focus of the pictures. If there ever could be a patently offensive lewd exhibition of female genitals consisting of their mere exposure without any suggestion of activity or conduct in the representation, the exhibition would certainly have to be more explicit, more well-displayed and prominent in the photograph through use of close-up camera technique. The Supreme Court reversal in Burgin supra raises considerable doubt as to whether even a color, focused depiction of female genitalia meets the patently offensive test.

First Amendment obscenity regulation is limited by two factors, (1) patently offensive material and (2) specific state regulations. The Supreme Court emphasized the nature of standard (b) in Miller as requiring both of these factors:

"Under the holdings announced today, no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive 'hard core' sexual conduct specifically defined by the regulating state law, as written or construed." 413 U.S. at 27.

Thus standard (b) is the heart of constitutional protection for sexual materials. Justice Rehnquist in his majority opinion in Jenkins v. Georgia, 418 U.S. 153 at 161 (1974), characterizes Miller standard (b) as an expression of "sub-

stantive constitutional limitations deriving from the First Amendment on the type of material subject to such a determination [of patent offensiveness]." Cf. Hamling v. United States, 418 U.S. 87 (1974); United States v. 12 200-Ft Reels of Film, 413 U.S. 123, 130 n.7 (1973); United States v. Womack, 509 F.2d 368 (D.C. Cir. 1974), cert. denied, 422 U.S. 1022 (1975); United States v. Friedman, 506 F.2d 511 (8th Cir.), cert. denied, 421 U.S. 1004 (1975); United States v. Groner, 494 F.2d 499 (5th Cir.), cert. denied, 419 U.S. 1010 (1974). Jenkins' holding that the film "Carnal Knowledge" is not obscene as a matter of law is not premised on inquiry into its literary merit, a standard (c) issue, but rather rests on the absence of standard (b) material:

"Nothing in the movie falls within either of the two examples given in Miller of material which may constitutionally be found to meet the 'patently offensive' element of those standards, nor is there anything sufficiently similar to such material to justify similar treatment. While the subject matter of the picture is, in a broader sense, sex, and there are scenes in which sexual conduct including 'ultimate sexual acts' is to be understood to be taking place, the camera does not focus on the bodies of the actors at such times. There is no exhibition whatever of the actors' genitals, lewd or otherwise, during these scenes. There are occasional scenes of nudity, but nudity alone is not enough to make material legally obscene under the Miller standards."

Jenkins' references to ultimate sexual acts being performed outside the camera's focus and to nudity alone

being insufficient, underscore that only the most explicit depiction of sexual conduct is to be prohibited. Finally, Jenkins clearly establishes that within the context of exhibition of genitals in material dealing with sex there are both lewd exhibitions not within constitutional protection and constitutionally-protected non-lewd exhibitions.

The determinations of both the administrative officials and the lower court that "Leg Art" magazines and the photographs are obscene are constitutionally infirm under Jenkins and Miller because the material is not within the constitutionally limited "patently offensive" category subject to regulation as obscene and because the material is not within the category of material specifically defined as obscene by the administrative policy and regulation.

As a final consideration in determining the obscenity of these materials, we suggest that the distinction between the mere possession of material and the distribution or exhibition of such material must be kept in mind.

The Miller court recognized that even in the case of obscene material state regulation is limited and circumscribed (413 U.S. at 19-20):

"This Court has recognized that the States have a legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant danger of offending the sensibilities of unwilling recipients or of exposure to juveniles. [Citations omitted.] It is in this context that we are called on to define the standards which must be used to identify obscene material that a State may regulate without in-

fringing on the First Amendment as applicable to the States through the Fourteenth Amendment." (Emphasis added.)

Thus, the Miller court stressed the continued vitality of Stanley v. Georgia, 394 U.S. 557 (1964), which invalidated the regulation of mere possession of material, the type of censorship involved in this case.

In Stanley, the Supreme Court emphasized the crucial difference between the type of regulation considered in Roth v. United States, 354 U.S. 508 (1957), and the regulation of possession by an individual of even obscene material for his or her own use (394 U.S. at 567):

"[Roth] dealt with public distribution of obscene materials and such distribution is subject to different objections. For example, there is always the danger that obscene materials might fall into the hands of children, see Ginsberg v. New York, supra, or that it might intrude upon the sensibilities or privacy of the general public."

Even if the materials ordered by Hawkins were obscene, and we contend they are not, the case at bar presents circumstances where there is no danger that the material will come into the hands of children. Similarly, there is little doubt that the materials will never be available to the eyes of the general public. Finally, since the inmates are not allowed to give or sell materials to one another, it is apparent that Hawkins' publications are necessarily for his own personal observation. Stanley

specifically rejected any regulation of possession of obscene materials "[b]ecause that right [the right of the individual to read or observe what he pleases] is so fundamental to our scheme of individual liberty" 394 U.S. at 568.

B. FACILITY OFFICIALS AND STATE OFFICIALS
HAVE VIOLATED CONSTITUTIONAL DUE PROCESS
REQUIREMENTS BY ACTING ARBITRARILY AND
IN NONCOMPLIANCE WITH STATE REGULATIONS

As noted above, both the facility officials and state officials have repeatedly acted in disregard of state corrections policy in rejecting non-obscene material and prohibiting its receipt by Hawkins.

In addition to exceeding the substantive regulatory authority, the officials in making the determinations have consistently failed to comply with their own procedures. Due process requires that administrative officials are to be bound by precepts incorporated in the applicable regulations. See, e.g., Paul v. United States, 371 U.S. 245 (1963); Vitarelli v. Seaton, 359 U.S. 535, 539 (1957); Service v. Dulles, 354 U.S. 363 (1959); Nader v. Nuclear Regulatory Commission, 513 F.2d 1045, 1051 (D.C. Cir. 1975).

The Record clearly illustrates that the correctional authorities have flagrantly disregarded the minimal censorship protection of Administrative Bulletin #60. Notice is not given at Clinton Correctional Facility when mail is held

for review (p. 8 supra). Inmates are not allowed to submit written statements to the IMRC (pp. 8-9 supra; B-15). All media mail is held for two weeks. (B-15) Censorship determinations by the IMRC are not limited to inmates "whose emotional instability and anti-social attitude are such that access to certain material may lead to individual behavior which threatens the safety and security of the institution . . . and which deters operation of a therapeutic program."* (A-4, B-15, B-17)

Clinton Correctional Facility officials do not afford inmates the opportunity to view the rules being applied despite the requirement in Administrative Bulletin #60. (A-8) State officials in Albany are also unwilling to provide Hawkins with a copy of Guideline 2 (B-7) and yet continually refer to language not contained in the text available to Hawkins (e.g., B-7, B-8).

* In the area of restriction of inmates' right to another First Amendment protection, access to religious services, courts have found that limitations on such access must be predicated on a determination at an evidentiary hearing that the particular individuals to be deprived would pose grave risks to the security of the prison if allowed to participate in group services. See LaReau v. MacDougall, 473 F.2d 974 (2d Cir. 1972), cert. denied, 414 U.S. 878 (1973; Sharp v. Sigler, 408 F.2d 966 (8th Cir. 1969).

The DMRC officials merely rubber-stamp the facility determinations and in so doing arbitrarily reject material which is well within the ambit of their own guidelines. Here again, we note that the DMRC lists several pornographic magazines on its "Periodic Master List of Approved Literature." See p. 13 supra, also A-9 to A-15. The DMRC officials' rubber-stamping of facility censorship of protected expression while allowing other soft-core pornography without facility review highlights the arbitrary nature of the censorship challenged in this case and the dangers of unequal application noted by Judge Weinfeld in Fortune Society v. McGinnis, 319 F. Supp. at 905.

Noncompliance by officials with their own procedural and substantive rules and unequal application are especially onerous in the First Amendment area due to the very nature of prior restraint and censorship with the inherent danger of unconstitutional excesses. Cf. Blount v. Rizzi, 400 U.S. 410 (1971) and Freedman v. Maryland, 380 U.S. 51 (1965). We submit that the applications of censorship by both facility and state officials in this case lack the minimal requisites of permissible prior restraint and censorship, strict compliance with clear ascertainable standards and meaningful review. See, e.g., Nitzberg v. Parks, 525 F.2d 378 (4th Cir. 1975).

CONCLUSION

Plaintiff-appellant respectfully requests that this Court reverse the decision and order of the court below on the grounds that the material is non-obscene under constitutional standards and that the actions of both the state and facility officials are violative of First and Fourteenth Amendment rights.

Dated: New York, New York
October 12, 1976

Respectfully submitted,

PAULA A. SWEENEY
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(212) 541-5800

ADDENDUM

"Obscenity" was defined by N.Y. Penal Law
§ 235.00(1) as follows:

"'Obscene.' Any material or performance is 'obscene' if (a) considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, and (b) it goes substantially beyond customary limits of candor in describing or representing such matters, and (c) it is utterly without redeeming social value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience."

This section was amended in 1974, effective September 1, 1974 to read:

"'Obscene.' Any material or performance is 'obscene' if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, sodomy, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political, and scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience."

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES

MEMORANDUM 9/30/76

From the desk of: Jerry Ducie
Associate Public Information Specialist

TO: Dear sir(s)

as per your phone call to Ms. Ruby Ryles,
I have attached copies of Administrative
Bulletin #60 and a list of acceptable
literature at our facilities.

Bulletin #60 is being re-drafted and there
will be changes from the one attached.

When the new draft is in final form, rest
assured we will send you a copy.

Any further questions..call
(518) 457-3182.

DEPARTMENT OF CORRECTIONAL SERVICES

GOV. A.E. SMITH
STATE OFFICE BUILDING
P.O. BOX 7033
ALBANY, N.Y. 12225

RUSSELL G. OSWALD
COMMISSIONER

May 30, 1972

ADMINISTRATIVE BULLETIN #60

TO: Superintendents of Correctional Facilities and State Institutions, Directors of State Hospitals, Central Office Group Heads and Division Heads, and Directors and Supervisors of Parole Field and Institutional Offices.

FROM: Russell G. Oswald, Commissioner *Russell G. Oswald*

RE: Guidelines and Procedures Governing the Receipt and Review of Literature and Related Materials for Inmates.

In accordance with Department practice of ongoing review and revision of existing policy, Administrative Bulletin #2 Amended is hereby canceled. Consequently, instructions contained herein supersede the following Departmental Directives:

1. Administrative Memo #81, issued March 24, 1971;
2. Administrative Bulletin #2, issued April 29, 1971;
3. Procedural Supplement to Administrative Bulletin #2;
4. Administrative Bulletin #2 Amended, issued 9/7/71.

The following policy and procedures now apply on this subject.

Departmental policy is to allow access by inmates to literature and related materials for either program or private individual use. Accordingly, inmates shall be allowed to subscribe to or receive from authorized correspondents a wide range of books, magazines and newspapers. As many inmates are undereducated and lack avocational interests, their reading of worthwhile materials is to be encouraged and guided. The understanding of the content of a wide range of subject matter may contribute to the development of a more knowledgeable and responsible human being with increased capacity to understand and adjust to society.

There are, however, some inmates whose emotional instability and anti-social attitudes are such that access to certain material may lead to individual behavior or behavior by groups of inmates which threatens the safety and security of the institution for both staff and other inmates, and which deters the operation of a therapeutic program. In such cases some censorship or prior restraint of inflammatory, obscene or disruptive literature is necessary to deter unrest, violence, and maladjustment.

In order that Department employees might be instructed concerning the proper review of literature for inmates, the Department specifies the following guidelines by which literature for inmates will be evaluated:

1. In general, the materials should be acceptable for regular mailing in the United States.
2. In general, publications which are utterly without redeeming social value, or which clearly depict acts involving necrophilia, masochism, sadism, bestiality, or unnatural preoccupation with excrement, are not acceptable. Otherwise, literature dealing with the subject of sex is to be considered appropriate.
3. The publication should not defame, villify or incite hatred towards persons because of their race, religion, creed or national origin.
4. The publication should not advocate the violent overthrow of the existing form of government of the United States or of this State. (See Penal Law § 240.15).
5. The publication should not advocate lawlessness, violence, anarchy or rebellion against governmental authority or portray such conduct as a commendable activity.
6. The publication should not incite disobedience towards law enforcement officers or prison personnel.
7. The publication should not depict the use or manufacture of firearms, explosives and other weapons.
8. The publication should not be of such a nature as to depict, describe or teach methods and procedures for the acquisition of certain physical manipulations and skills which expertise will, in the opinion of Department authorities, constitute a threat to the safety, welfare and health of other inmates and employees.

Publications which discuss different political philosophies, and those dealing with criticism of Governmental and Departmental authority, are acceptable as reading material provided they do not violate the above guidelines.

The foregoing guidelines have been broadened and simplified for the purpose of facilitating easier access by inmates to a wide range of literature.

Superintendents and staff of Correctional Facilities are urged to use whatever available means they have to provide facility libraries with literature which presents differing points of view relevant to the issues of the day. This latter point is important in view of the highly biased and slanted nature of the literature which inmates are currently requesting.

In view of the above considerations, the department specifies the following procedures for evaluation and decision-making regarding literature for inmates.

CORRECTIONAL FACILITY MEDIA REVIEW COMMITTEE

Each institution will establish a media review committee. It is suggested that this committee consist of the head of the service unit or his representative, a member of the Mental Hygiene staff, the chaplains, head of the education program or his representative, the librarian, and a representative of the custodial service.

The Superintendent will inform the Commissioner of the membership of the Facility Review Committee, by notifying the Chairman of the Departmental Media Review Committee. The Superintendent will also inform the Commissioner of any changes in said membership.

When it is determined that literature addressed or belonging to an inmate should be reviewed in order to ascertain its acceptability according to the guidelines of this bulletin, the facility review committee will meet to review the literature in question, and will be guided by the following:

1. The entire media review procedure must be exercised within a period of time not to exceed six weeks from the date the literature is received into the facility. That is to say the entire review process, from facility to Albany, to facility, must be complete before expiration of said six weeks period.

2. Initially, inmates will be advised in writing of such review so that they will be informed of the reason for delay in the receipt of their literature. Inmates may be invited to submit a written statement to the facility committee in explanation of their desire for the literature.
3. The facility committee will consider the inmate's literature, written statement and other pertinent information. Subsequently, the committee will issue a decision which shall be subject to approval by the Superintendent.
4. Acceptable literature will be given promptly to the inmates.
5. If the facility committee rejects the literature and the Superintendent upholds such decision, said literature will be forwarded to the Departmental Media Review Committee, with the inmate's statement and the Departmental Media Review Transmittal Report justifying said rejection. Specific page numbers which demonstrate a violation must be cited.
6. Inmates will not be prohibited from subscribing to newspapers, magazines and periodicals, but shall be informed that individual issues will be withheld if information contained therein is confirmed to be in violation of the guidelines set forth in this Bulletin. Articles will not be cut out or otherwise removed from any publication.
7. If, after being advised of these conditions, inmates wish to subscribe to newspapers, magazines and periodicals they will be allowed to do so. No facility will place a permanent ban on any publication unless instructed to do so by the Commissioner, or other appropriate authority as the Commissioner may designate.

8. Newspapers shall be delivered to inmates only when received direct from the publisher. Otherwise, inmates may receive magazines, periodicals, journals, etc. and books from sources other than the publisher after such publications have been examined and approved in accordance with instructions contained herein.

DEPARTMENTAL MEDIA REVIEW COMMITTEE

The Departmental Media Review Committee is hereby established to assist and guide each Correctional Facility Review Committee in reviewing literature for inmates.

The Commissioner designates the Deputy Commissioner of Program Services to exercise administrative responsibility over the Department's Media Review Program. It shall be under his direction that procedures are administered, and memos and lists issued by the DMRC shall bear his signature.

The following Central Office Staff shall constitute official membership of the Departmental Review Committee:

1. Director of Education - Chairman
2. Director of Institutional Parole Services - Member
3. Director of Correctional Guidance - Member

An alternate member and staff assistants will be nominated as needed by the Chairman, and approved by the Deputy Commissioner of Program Services. Attorneys for the Department shall provide legal counsel as needed.

NOTIFICATION OF APPROVED AND DISAPPROVED LITERATURE

Each Correctional Facility under the jurisdiction of the Department will be sent a written notification of the Departmental Media Review Committee (DMRC) determinations. These notifications will be used by each facility committee to modify and up-date their own lists of approved and disapproved literature which will be posted in areas readily accessible to inmates, (i.e., cell blocks, library, school bulletin boards).

MASTER LISTINGS OF APPROVED LITERATURE

Periodically, the DMRC will send to each facility a master list of publications which prior review has demonstrated do not usually violate our literature guidelines. Such lists shall constitute the Periodic Master List of Approved Literature, Department of Correctional Services. Once a publication (book, magazine, periodical) has been included on the Master List by the Departmental Committee, no single issue should be disapproved because of an occasional feature or article which may contradict the established guidelines.

This Master List is not to be confused with the lists of approved and disapproved literature put forth by the DMRC regarding media referred to it by the Facility Committee; such review is concerned with single issues of periodicals and magazines, and not entire publications.

DISSEMINATION OF INFORMATION CONTAINED HEREIN

Superintendents will provide a means whereby all inmates, employees and members of the Facility Media Review Committee are informed about this Bulletin. Inmates shall be informed of the procedure used by the Department to determine the acceptability of their literature, as well as the guidelines used by the Department to determine such acceptability.

jf

FIRST PERIODIC MASTER LIST OF APPROVED LITERATURE
N.Y.S. Department of Correctional Services
April 28, 1972

<u>No.</u>		<u>No.</u>	
1	A. Hitchcock Mystery Magazine	24	Antique Automobiles
2	<i>Island Time</i> Adventure	25	Argosy
3	All Outdoors	26	Arizona Highways
4	All Sports Review	27	Art & Artist
5	All Star Sports	28	Art In America
6	Amature Athlete	29	Art News
7	Amazing Stories	30	Arts & Activities
8	American Artist	31	Astounding Science Fiction
9	American Astology	32	Astrology Guide
10	American Fabrics	33	Astronautics
11	Americal ^{al} Girl	34	Athletic Journal
12	American Heritage	35	Atlantic Monthly
13	American Highways	36	Atlantis
14	American Home	37	Audubon Magazine
15	American Homemaker	38	Auto Car
16	American Indian	39	Auto Driver
17	American Motorcycling	40	Auto Racing
18	American Opinion	41	Auto Sports
19	American Rodding	42	Baseball Digest
20	Amsterdam News	43	Basketball
21	Analog, Science Fact and Fiction	44	Beauty Fashion
22	Animal Kingdom	45	Beauty Ideas
23	Animals	46	Beauty Tips

<u>No.</u>	<u>Title</u>	<u>No.</u>	<u>Title</u>
47	Best Homes	73	Cars
48	<i>For the Home</i> Better Homes & Gardens	74	Cat Fancy
49	Big Book of Wrestling	75	Cats Magazine
50	Black Belt <i>Nov</i>	76	Cattlemen
51	Black Law Journal	77	Changing Times
52	Black Scholar	78	Chase Magazine
53	Black World	79	Chess
54	Bluebook	80	Chess Review
55	Boat Sport	81	Christian Science Monitor
56	Boating	82	<i>Guide to the</i> Cb-Ed <i>Publications in New York</i>
57	Boats	83	Community
58	Bow & Arrow	84	Confidential
59	Bowling	85	Consumers Bulletin
60	Boxing	86	<i>Consumer Report</i> Contest
61	Boxing Illustrated	87	Coronet
62	Boxing & Wrestling	88	Cosmopolitan
63	Boys Life	89	Country Beautiful
64	Bronze Thrills	90	Country Dancer
65	Business Week	91	Country Living
66	Camera	92	Craft Horizons
67	Camera 35	93	Craft, Model and Hobby Industry
68	Camping Guide	94	Craftsman
69	Camping Journal	95	Cue
70	Car & Driver	96	Current Events
71	Car Craft	97	Custom Cars
72	Car Life		

<u>No.</u>	<u>Title</u>	<u>No.</u>	<u>Title</u>
98	Cycle	123	Fishing Gazette
99	Cycle Guide	124	Fishing World
100	Cycle World	125	Fitness for Living
101	Cycling	126	Flower & Garden
102	Dissent	127	Fly Fisherman
103	Dog News	128	Flying
104	Dog World	129	F M <i>Football</i> Soccer
105	Downbeat	130	Forbes
106	Drag Racing	131	Ford Times
107	Drag Racing, USA	132	Fortune
108	Drag Strip	133	Fortune News
109	Ebony	134	Fresh & Salt Water Fish
110	Echo	135	Fur-Fish-Game
111	Electronics	136	Gentlemen's Quarterly
112	Electronics Illustrated	137	Glamour
113	Electronics World	138	Glamour Photography
114	Ellery Queen's Mystery Magazine	139	Golden West
115	Encounter	140	Golf
116	Esquire	141	Golf & Club
117	Essence	142	Golf Digest
118	Every Woman's Daily Horoscope	143	Golf Monthly
119	Farm Journal	144	Golf World
120	Field & Stream	145	Golfing
121	Fisherman	146	Good Housekeeping
122	Fishing	147	Good Humor
123 a	Genesis	148	Guitar Player

<u>No.</u>	<u>Title</u>	<u>No.</u>	<u>Title</u>
149	Hair & Makeup Trends	174	Horseman's Journal
150	Hair Magic	175	Hot Cars
151	Hair Secrets	176	Hot Rod Magazine
152	Hair Style	177	House & Garden
153	Hair Trends	178	House & Home
154	Hairdo & Beauty	179	House Beautiful
155	Harper's Bazaar	180	Humanist
156	Harper's Magazine	181	Ingenue
157	Health	182	Inside Basketball
158	Hep	183	Inside Wrestling
159	Hi-Fi Sound	184	Intercom <i>Digest</i>
160	High Fidelity	185	Interior Design
161	Hobbies, The Magazine of Collectors	186	International Boxing
162	Holiday	187	International Surfing
163	Home Craftsman	188	Jazz
164	Home Garden	189	Jazz & Pop
165	Home Handyman	190	Jazz Review
166	Home Sewing & Knitting	191	Jet Magazine
167	Home Workshop	192	Jive
168	Horizon	193	Journal of Negro History
169	Horoscope	194	Karate - <i>nr</i>
170	Horoscope Guide	195	Karting World
171	Horse	196	Ladies' Home Journal
172	Horse & Rider	197	Life <i>Century</i>
173	Horse Lover's Magazine	198	Long Island Press
173a	Hustler		

<u>No.</u>	<u>Title</u>	<u>No.</u>	<u>Title</u>
199	Look	225	Muscular Development
200	Marriage	226	Muscle Builder
201	McCall's Magazine	227	Muscle Power
202	McCall's Needlework & Crafts	228	Musical America
203	Mademoiselle	229	Musical Courier
204	Mechanix Illustrated	230	Musical Quarterly
205	Men's Hairstylist and Barbers Journal	231	National Geographic Magazine
206	Miss Black America	232	National Horseman
207	Mod	233	National Observer
208	Modern Bride	234	Natural History
209	Modern Cycle	235	Negro History Bulletin
210	Modern Gymnast	236	New Ideas for Hairstyling
211	Modern Photography	237	New Lady
212	Motor	238	New Republic
213	Motor Age	239	New Yorker
214	Motor Boating	240	New York Daily News
215	Motor Cycle	241	New York Times
216	Motor Cycle World	242	Newsweek
217	Motor Cyclist Illustrated	243	Oceans
218	Motor Life	244	Outdoor Life
219	Motor Trend	245	Pagant
220	Motorcade	246	Penal Digest International
221	Motorcyclist	247	Photo Developments
222	Motorland	248	Photoplay
223	Motorsport	249	Playboy
224	Muhammad Speaks	250	Popular Astronomy
224a	Oui		

<u>No.</u>	<u>Title</u>	<u>No.</u>	<u>Title</u>
251	Popular Cartoon	277	Rod
252	Popular Cycling	278	Rod & Custom
253	Popular Electronics	279	Rodder & Superstock
254	Popular Hot Rodding	280	Saga
255	Popular Mechanics	281	Sage
256	Popular Photograph	282	Salt Water Sportsman
257	Popular Science Monthly	283	Saturday Evening Post
258	Pro Football Weekly	284	Saturday Review
259	Pro Sports	285	Science & Electronics
260	Professional Photographer	286	Science & Mechanics
261	Profitable Hobbies	287	Science Digest
262	Progressive Farmer	288	Science Fiction
263	Projects, Electronics and Mechanics	289	Scientific American
264	Psychic	290	Scope
265	Psychology Today	291	Sepia
266	Quarterback	292	Seventeen
267	Racing Pictorial	293	Signature
268	Radio & Television Journal	294	Silver Screen
269	Radio Electronics	295	Simplicity
270	Reader's Digest	296	Simplicity's Modern Miss
271	Real Story	297	Skiing
272	Real West	298	Skin Diver
273	Redbook Magazine	299	Skipper
274	Ring	300	Sky Magazine
275	Road & Track	301	Sky & Telescope
276	Rock & Soul Songs	302	Song Hits

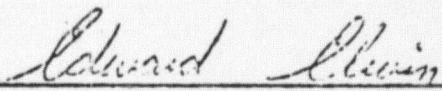
<u>No.</u>	<u>Title</u>	<u>No.</u>	<u>Title</u>
303	Songs & Starts	329	Super Street Cars
304	Soul Illustrated	330	Tan
305	Speed Age	331	Teen
306	Speed & Supercar	332	Time
307	Sport	333	Track & Trail
308	Sport Fishing	334	X Trail
309	Sport Flying	335	Trans Action
310	Sport World	336	X Trial
311	Sporting News	337	True
312	Sports Afield	338	True Experience
313	Sports Age	339	True Story Magazine
314	Sports Car	340	True West
315	Sports Car Graphic	341	U.S. News & World Report
316	Sports Car Illustrated	342	Vogue
317	Sports Extra	343	Western Horseman
318	Sports Illustrated	344	Wierd
319	Sports Today	345	Woman
320	Sportsman's Review	346	Woman's Homecraft
321	Stereo Review	347	Wood Worker
322	Stock Car Racing	348	Woodworking Digest
323	Strange	349	Workbasket
324	Strength & Health	350	Workbench
325	Sunset	351	World Boxing
326	Surfer	352	World Car Guide
327	Surfling	353	World Sports
328	Super Sports	354	World Tennis

<u>No.</u>	<u>Title</u>	<u>No.</u>	<u>Title</u>
355	Wrestling	359	Writers Digest
356	Wrestling News	360	Writers Showcase
357	Wrestling Review	361	Young Miss
358	Wrestling World		

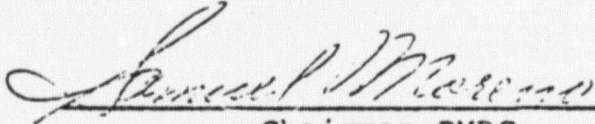
Few newspapers have been included in this list. Those of material interest such as the New York Times, Wall Street Journal, Business Week, etc., as well as a selection of relevant and reputable state, regional and local newspapers should be allowed without prior censorship. Questions about same should be referred to the Chairman of the Departmental Review Committee.

This is not a "closed" list. Changes, deletions, and additions will be made periodically. Publications not included on this list are subject to normal review procedures as established by the New York State Department of Correctional Services.

Please note that the attached "List of Books on Afro-American Studies," which was sent to you under cover of Administrative Memo #82, March 24, 1971, is to be used in conjunction with the Master List of Approved Literature. These books, along with all other books previously approved by the Departmental Media Review Committee, should be allowed without censorship.



Deputy Commissioner
of Program Services



Chairman DMRC
Director of Education

Enclosure

March 24, 1971

LIST OF BOOKS ON AFRO-AMERICAN STUDIES

<u>TITLE</u>	<u>AUTHOR</u>
1. Before the Mayflower	Jerome Bennett
2. Black Power U.S.A.	Jerome Bennett
3. Soul on Ice	Eldridge Cleaver
4. The Soul of Black Folk	W.E.B. DuBois
5. Black Face, White Mask	F. Fanon
6. Black in White America	Leonard Freed
7. In White Africa-The Dynamics of Apartheid	William Frye
8. Black Rage	Grier & Cobb
9. 3/5 of a Man	Floyd McKissick
10. Message to a Black Man	Elijah Muhammad
11. A Pictorial History of the Negro in America	Langston Hughes & M. Maltzer
12. Great Men of Color	J. A. Rogers
13. Superman to Man	J. A. Rogers
14. Beyond Racism	Whitney Young, Jr.
15. The Man Who Cried I Am	J. A. Williams
16. This Child Gonna Live	Sarah E. Wright
17. Many Shades of Black	Wormley & Fenderson, Eds.
18. 12 Million Black Voices	Richard Wright
19. The Wretched of the Earth	F. Fanon
20. Autobiography of Malsolm X	
21. Black Voices	Chapman, Ed.

March 24, 1971

<u>TITLE</u>	<u>AUTHOR</u>
22. Manchild in the Promised Land	Brown, Claude
23. Invisible Man	Ellison
24. Go Tell It On The Mountain	Baldwin, James
25. Black Perspective" A Guide for Teaching Social Studies	State Education Department
26. Autobiography of W.E.B. DuBois	
27. Negro Almanac	Ploski & Brown
28. Selected Poems of Lanston Hughes	Hughes
29. Native Son	Wright, Richard
30. Judge	Holt, Rackham
31. Story of the Negro	Bontemps, Arna
32. Cane	Toomer, J.
33. System of Dante's Hell	Jones, Leroy
34. From Slavery to Freedom	Franklin, J.
35. On Thesa I Stand	Cullen, C.
36. Narrative of the Life of Frederick Douglass	Douglas, Frederick
37. The African Genius	Little, Brown
38. The African Past	Little, Brown
39. Black Feeling, Black Talk, Black Judgment	Giovanni, N.
40. Black Power - The Politics of Liberation in America	Carmichael & Hamilton, Eds.

A P P E N D I X

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

In The Matter of TIVIS TROIT HAWKINS, II,
Plaintiff,

-against-

HON. J. E. LaVALLEE, Superintendent
Clinton Correctional Facility, Dannemora,
New York 12929,

T. J. O'CONNOR, Secretary, Institutional
Media Review Committee, Clinton Correctional
Facility, Dannemora, New York 12929,

COMMISSIONER OF CORRECTION, Department
of Correctional Services, State Office
Building Campus, Albany, New York 12226

RONALD HADDAD, Administrative Assistant
Program Services, Department of Correctional
Services, State Office Building
Campus, Albany, New York 12226,

Defendants.

EDMUND PORT, Judge

76-CV-

Memorandum-Decision and Order

The Clerk of the court has sent to me for my consideration a civil rights complaint together with an affidavit in forma pauperis from a state inmate confined to the Clinton Correctional Facility, Dannemora, New York.

The crux of the complaint is plaintiff's claim that he has been denied the "right", on three occasions, ¹ to receive and subscribe to "semi-nude Art Magazines, and semi-nude and nude photographs that (he) has in the past (been allowed to receive at)

1. January 31, 1974; February 4, 1975; and March 25, 1975.

Clinton Correctional Facility." Complaint p. 1. Plaintiff alleges and demonstrates that he has exhausted his administrative remedies within the Department of Correction.²

The items disallowed plaintiff by the defendants were all rejected on dual grounds: (1) as being without redeeming social value, and (2) as appealing to prurient interest in sex. Plaintiff, contends that the second ground, i.e., appealing to prurient interest in sex, is not a ground which is forbidden under Administrative Bulletin 60, Guideline #2 (dated May 30, 1972). This is not, to my mind, a critical factor, as plaintiff advises that all three rejections were also made on the ground that they were entirely without redeeming social value, which is clearly forbidden by Guideline #2.

Plaintiff annexes to his complaint as Exhibit M a photo which is termed to be of the exact nature and representative of the photos denied him; he annexes as Exhibit N a booklet which is termed to be of the exact nature and representative of the booklets and publications withheld.

It is axiomatic that obscene material is not protected by the First Amendment. Miller v. California, 413 U.S. 15 (1973);

- 2 -

2. Not implying, of course, that such exhaustion is necessary to the institution of these proceedings.

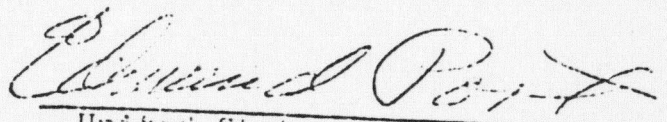
Roth v. United States, 354 U.S. 476 (1957). An examination of plaintiff's exhibits M and N, which he terms to be of the exact nature of the materials withheld, easily and readily convinces me that:

- a) the materials are utterly without redeeming social value;
- b) that an average person applying contemporary standards in this community would find that the materials, taken as a whole, appeal to the prurient interest;
- c) that the materials, taken as a whole, lack any literary, artistic, political or scientific value; and
- d) contain and consist of patently offensive representations of and lewd exhibition of female genitalia.

Regardless of the measuring criteria utilized, i.e., Memoirs v. Massachusetts, 383 U.S. 413, 418-19 (1966) or Miller v. California, supra, a casual examination of the material discloses hard-core pornography not within the protection of the First Amendment. Accordingly, the complaint will be denied and dismissed.

For the reasons herein, it is

ORDERED, that the complaint herein be and the same hereby is denied and dismissed. Leave to proceed in forma pauperis is granted, and the Clerk is directed to file the papers herein without the payment of the required fees.


United States District Judge

Dated: January 28, 1976
Auburn, New York.

Name Hon. P. Preiser, Comm. of

When rep. sign your full name and address.
Give him full name and number.

Street & No. State Office Building
City Albany 12226 State New York

Box B
DANNEMORA N. Y. 12929

MAR 29 1974

Date Monday March 25, 1974

COMMISSIONERS OFFICE

Honorable Sir:

Find enclosed original copies of all Correspondence with a one Mr. Gordon T. Leavy, Assistant Director of Education, and the rejection slips.

My sentence isn't ephemeral, it is in fact life. The society to which I'm confined, is by an established fact, biologically abnormal to the heterosexual lifestyle. A breeding ground for homosexuality, and completely divorced from the society outside the walls of this prison.

Guideline # 2, Briefly stated, "Appeals to prurient interest in sex. Without redeeming social value." is being arbitrarily applied both here and in the Department of Education there in Albany.

I was told by the civilian (2 yrs. ago) that works in the prison library that I could have pictures as long as there was no sexual acts depicted in them, copulating, foundling, electronic devices, etc.,

Page one, continued.

DO NOT SEND CASH OR STAMPS

Exhibit "A"

Name

Street & No.

City State

When replying sign your full name and address
Give inmate's full name and number.

Box B

DANNEMORA N. Y. 12929

Date

I have never sent for anything of this nature.
I have in the past, sent for and received, several hundred photos. Quite a few exactly like the ones that were rejected. This is because we are not allowed to give to another inmate personal property, and, one gets tired of looking at the same thing all the time.

Others have, since my rejection received the very same type of photos and magazines. I would further greatly appreciate your explaining to me why is it that every prison in the State have a different set of rules. And why, Mr. Leavy would not give a reason in reference to the letter that I sent to him, his reply is totally void of anything but the fact that the pictures in question, had been ruled on and sent back here.

I have been told that your administration is a very progressive one, I am requesting that if at all possible, that you personally look into this matter. I also would greatly appreciate the return of all correspondence and the rejection slip, and that you acknowledge receipt of this letter, believe me Mr. Preiser to be,

27 Most Respectfully,

March 74

DO NOT SEND CASH OR STAMPS

Thvis Troit Hawkins 11
43487

Exhibit A (cont.)



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE STATE OFFICE BUILDING CAMPUS
ALBANY, N.Y. 12226

PETER PREISER
COMMISSIONER

April 1, 1974

Mr. Tivis Hawkins #43487
Clinton Correctional Facility
Dannemora, New York 12929

Dear Mr. Hawkins:

Your March 25 letter to Commissioner Peter Preiser regarding media review has been referred to this office for reply.

The photographs in question included exposures of female genitalia which is considered to violate guideline #2. This is not unique to Clinton, but is considered to be a violation of guideline #2 in every facility throughout the Department.

Sincerely,

James F. Howser
Administrative Assistant
Program Services

JFH:mg

Exhibit "B"



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES

THE STATE OFFICE BUILDING CAMPUS

ALBANY, N.Y. 12226

PETER PREISER
COMMISSIONER

May 13, 1974

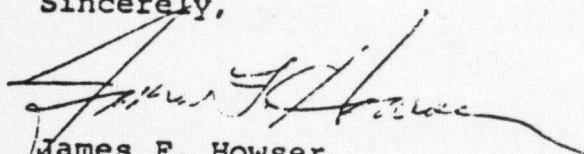
Mr. Tivis Troit Hawkins II
#43487
Clinton Correctional Facility
Box B
Dannemora, New York 12929

Dear Mr. Hawkins:

Enclosed you will find all correspondence sent by you to
Central Office.

I am not enclosing the full text of Guideline #2 since it is
contained in Administrative Bulletin #60, which may be found in
Clinton's library.

Sincerely,


James F. Howser
Administrative Assistant
Program Services

bes
Enclosure

Exhibit "C"



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES

THE STATE OFFICE BUILDING CAMPUS

ALBANY, N.Y. 12226

PETER PREISER
COMMISSIONER

May 23, 1974

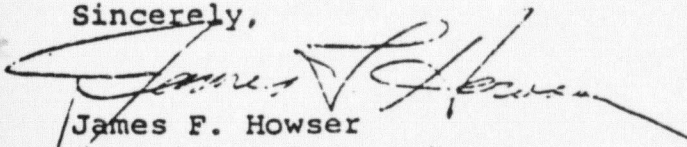
Mr. Tivis Troit Hawkins II
#43487
Clinton Correctional Facility
Box B
Dannemora, New York 12929

Dear Mr. Hawkins:

In response to your May 13 letter, your quoting of guideline #2 is inaccurate. You left out part of the first sentence which states "In general, publications which appeal to prurient interest and which ----". As you can see, the interjection of prurient interest, which is stated in the guideline, is an important consideration when reviewing photographs such as the ones mentioned in your letter.

The photographs in question included exposures of female genitalia which is considered to violate guideline #2. I suggest you re-read Administrative Bulletin #60, guideline #2, and hopefully you can understand why the decision was reached.

Sincerely,


James F. Howser
Administrative Assistant
Program Services

bes

Exhibit "E"

Honorable William Gard
Deputy Superintendent
Clinton Correctional Facility

March 7, 1975

Sir:

I have been, for the past month, having problems with the Institution Media Review Committee. Perhaps you can find out the reason why they intercepts and holds my mail and orders without informing me immediately of this fact. I cannot object to their rejecting material, however, I do not think that they have the authority to hold back mail, in some cases for as long as two weeks. This has happened three times to my personal knowledge in the past month.

The first time being with an order of photographs and selection sheets that were sent to this Institution, to me on 2/18/75, by registered mail, number 148. I received all of the order but selection sheet number 11, on 2/21/75. I was not informed of the fact that they held out said sheet until 3/7/75, and this was in the form of a rejection slip. I ordered all of the pictures from that source (Maylsayl's, Vancouver B.C.) on 11/21/73. What I am now ordering is the balance of photos from negatives that are on the selection sheets that now has different numbers than the ones that are recorded with the Review Committee.

The second time concerns magazines and pictures from a Mr. E.A. Patters, which came here between the first (1st) and fourth (4th) of this month. They have (M.R.C.) yet to inform me of the fact that they are holding them. I have in the past ordered all of the magazines from this quarter, numbering five (5) through nineteen (19). I also receive originals (pictures) of what is depicted in the magazines. Once again, as with the abovementioned, these magazines only depict what is already been issued, just different poses. They are holding numbers one (1), and twenty (20) along with approximately twelve (12) photographs. Numbers three (3) and four (4) were sent to Albany on 1/22/75 and I have not as yet heard the result concerning them.

Finally, concerning pictures from Monique, which is a subsidiary of Andy Anderson, a firm that I have ordered all that were for sale, Monique only offers photos of the same models, but with larger and smaller pics, at slightly higher prices. They came in last week, and I was informed of the fact only through a rejection slip, which I received on 3/7/75.

In conclusion, you might wonder why I order so many pictures, I will give you the reason why; we inmates are not allowed to give to one another, or trade with one another our personal property, so I order new pictures periodically. I do not take any out of my cell, nor do I allow other inmates to view any of them. I either tear up or just keep what I have. The Honorable J. E. LaVallee, told me of his suspicions of profiteering on my part, during a personal interview some time ago. I assured him that this wasn't the case on my part. In terminating the interview, he issued an admonition that I shall never forget. I would greatly appreciate any assistance that you can give in this matter. Please believe me to be,

Most Respectfull

Exhibit "J"

Tivis Troit Hawkins II
43487
H-9-1

DEPARTMENT MEDIA REVIEW COMMITTEE TRANSMITTAL REPORT

Facility

Committee: Clinton Correctional Facility

Item: 80 Pictures

Date: 1-4-74

Hawkins #43487

~~XXXXXX~~

SOURCE: Private Collectors

Facility Determination:

Rejected under Guideline # 2
Pages All pictures

Reason: Entirely without redeeming social value.

DO NOT WRITE BELOW THIS LINE - DEPARTMENT COMMITTEE USE ONLY

Staff Assistant Recommendation & Justification:

Department Committee - Final Determination:

Rejected, violation of guideline #2. Appeals to prurient interest in sex. Without redeeming social value

EXHIBIT "K"

Samuel Masco
Signature - Chairman

JAN 01 1974
Date of Final Determination

OK: [Signature] Hawkins # 4 : YOU ARE HEREBY NOTIFIED THAT THE PUBLICATION REFERRED TO ABOVE HAS BEEN REJECTED FOR REASONS INDICATED. CHECK BELOW OUR CHOICE OF METHOD FOR DISPOSING OF THIS MATERIAL, AND RETURN THIS FORM TO THE CHAIRMAN OF THE INSTITUTION MEDIA REVIEW COMMITTEE.

☐ SEND TO MY HOME, AT MY EXPENSE.

☐ RETURN TO PUBLISHER, AT MY EXPENSE.

☐ DONATE TO PERSON INDICATED, AT MY EXPENSE.

☐ RETAIN IN ~~XXXXXX~~ FACILITY UNTIL I AM RELEASED, IF THERE IS SPACE AVAILABLE.

☐ DESTROY

E: Relative (Relationship)
Correspondent other than relative

Publisher (Identify)
Organization (Identify by Name)

DEPARTMENTAL MEDIA REVIEW COMMITTEE TRANSMITTAL REPORT

Facility Clinton Correctional Facility

Committee: Media Review

Item: Log Art #3, 2 & 4

Date: _____

Author: _____

Facility Determination: _____

Rejected under Guideline # 2
Pages _____

Reason: inherent interest in sex
with no redeeming social values

~~DO NOT WRITE BELOW THIS LINE - DEPARTMENT COMMITTEE USE ONLY~~

Staff Assistant Recommendation & Justification:

Clinton Media Review--Rejected

Department Committee - Final Determination:

Albany Media Review--Rejected 2/4/75

EXHIBIT "L"

Signature - Chairman _____

Date of Final Determination _____

TO: Watkins # 43437 : YOU ARE HEREBY NOTIFIED
THAT THE PUBLICATION REFERRED TO ABOVE HAS BEEN REJECTED FOR REASONS IN-
DICATED. CHECK BELOW YOUR CHOICE OF METHOD FOR DISPOSING OF THIS MATER-
IAL, AND RETURN THIS FORM TO THE CHAIRMAN OF THE INSTITUTIONAL MEDIA
REVIEW COMMITTEE.

SEND TO MY HOME, AT MY
EXPENSE.

RETURN TO PUBLISHER, AT
MY EXPENSE.

DONATE TO PERSON INDICATED,
AT MY EXPENSE.

RETAIN IN MY PACKAGING ROOM
UNTIL I AM PREPARED TO
TRANSFER TO SPACE XXXXXXXX

DESTROY

R.C 2

No. 13487 Name Hawkins Location H9-1
Date 1-15-75

Institution Media Committee has adjudged your (literature)

Seg. 1st. #3

Entire Publication

in violation of Department Guideline 2 (Posted on your bulleting board).
(It/ a copy) (has been/ will be) forwarded 1-22-75 to the Departmental Media Review
Committee, Albany, New York for their review and final decision.

If our decision is reversed, you will receive your literature in question as soon
as it is returned. Please allow 6-8 weeks for return.

If our decision is upheld, you may dispose of the literature by giving permission
to destroy, return to the sender, or at your own expense, send home; otherwise, it will
be placed in your personal property.

You may, in writing to the Media Review Committee, express your reasons and desire
for this literature.

T.J. O'CONNOR

Secretary
Institutional Media Review Committee

Exhibit "1-1"



STATE OF NEW YORK

DEPARTMENT OF CORRECTIONAL SERVICES

THE STATE OFFICE BUILDING CAMPUS

ALBANY, N.Y. 12226

PETER PREISER
COMMISSIONER

October 17, 1974

Mr. Tivis Hawkins
CL43487
Clinton Correctional Facility
Box B
Dannemora, New York 12929

Dear Mr. Hawkins:

Your communication of October 7, directed to Commissioner Peter Preiser, has been referred to this office for reply.

The material you allege is missing was rejected by the Departmental Media Review Committee on January 31, 1974, and returned to Clinton on February 22, 1974.

Reference to the reply on your interview form of May 3, 1974, verifies the material was received at Clinton and, "...sent to the Library on March 19, 1974". Clearly, Clinton should process your claim, and to that end a copy of this letter to Clinton will serve to so effect such action.

I trust your difficulty will be soon resolved. Should you experience further difficulty, please advise of details.

Your memos are returned as per your request.

Sincerely,

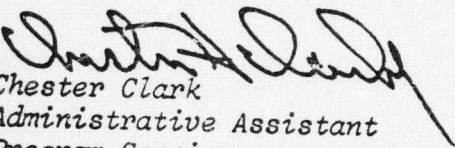

Chester Clark
Administrative Assistant
Program Services

Exhibit "O"

bes

attachments

cc: Superintendent LaVallee - Clinton
Central Files

CH R-24

STATE OF NEW YORK—DEPARTMENT OF CORRECTIONAL SERVICES

CLINTON CORRECTIONAL FACILITY

Interdepartmental Communication

Date March 12, 1975

From: Service Unit

Re: Tivis Hawkins - CL #43487

Subject: Media Review

B-15

It takes approximately two weeks to process any News Media that comes into the institution as the Media Review Committee meets but once a week. Therefore, there may be delays in receiving your material.

All residents are notified of rejected material only by the blue rejection slip. One notice is proven to be all the notice that is necessary.

Sr. Correction Counselor

RBG:clp

Media Review File Copy

Exhibit "R"

STATE OF NEW YORK-DEPARTMENT OF CORRECTIONAL SERVICES
CLINTON CORRECTIONAL FACILITY

LEGAL LETTER

2508

Honorable Edmund Port
Name. United. States. District. Court.
Street & No.... Federal Building.....
City Auburn. 13021..... State New York..

When replying sign your full name and address
Give inmate's full name and number.

Box B
DANNEMORA, N. Y. 12929

Date Wednesday, May 28, 1975..

Re: U. S. ex rel Hawkins v. LaVallee, et al

Honorable Sir:

Find enclosed one (1) rejection slip, which is directly related
paragraph five (5), page three (3), of the Petition for a Civil Rights
Complaint that was received on April second (2nd) of 1975, by the Chief
Clerk in Utica, New York, which was to be sent to you.

I first sent an interview slip to the head of the Institutional
Media Review Committee, requesting the whereabouts of the eleven (11)
photographs mentioned in paragraph two (2) page four (4). After wait-
ing a month I sent another slip to the Deputy Supt. I received no re-
ply from either. They have now started rejecting material, that before
being sent for, was approved. Should I submit an additional Complaint
concerning the above, or should I submit an Article 78 in the State
Court? Please believe me to be,

Most Respectfully,

T. J. Hawkins II

Tivis Troit Hawkins II

Post Office Box "B" # 43487

Dannemora, New York 12929

born to before me this 28

of May 19 75

Henry D. Buzen

NOTARY G. BINGUE
Notary Public

B-16

Clinton Co. - State of N. Y.
Commission Expires March 30, 1977

DEPARTMENTAL MEDIA REVIEW COMMITTEE TRANSMITTAL LETTER

Facility Clinton Correctional Facility

Committee: Media Review

Item: 1.36 photos & order blank
2. Sat #11

Date: _____

Author: From: Monique & Navalays

Facility Determination:

Rejected under Guideline # 2
Pages

Reason: Prurient interest in sex
with no redeeming social values

DO NOT WRITE BELOW THIS LINE - DEPARTMENT COMMITTEE USE ONLY

Staff Assistant Recommendation & Justification:

C.C.F. Media Review Rejected

Department Committee - Final Determination:

Altay Media Review--Rejected on 3-25-75

SIGN THE E SHEETS AND RETURN TO THE LIBRARY

Signature - Chairman

Date of Final Determination:

TO: Hawkins # 43427 : YOU ARE HEREBY NOTIFIED
THAT THE FUNDATION REFERRED TO ABOVE HAS BEEN REJECTED FOR REASONS IN-
DICATIONED. CHECK BELOW YOUR CHOICE OF METHOD FOR DISPOSING OF THIS MATER-
IAL, AND RETURN THIS FORM TO THE CHAIRMAN OF THE INSTITUTIONAL MEDIA
REVIEW COMMITTEE.

SEND TO MY HOME, AT MY
EXPENSE.

RETURN TO PUBLISHER, AT
EXPENSE.

____ DONATE TO PERSON INDICATED,
____ AT MY EXPENSE.

NO SPACE AVAILABLE

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 01-11-2001 BY 60322 UCBAW

DESTROY

COPY OF THE WITHIN
RECEIVED
DEPARTMENT OF LAW

OCT 12 1976

NEW YORK CITY OFFICE
Wm J. Lebowitz
ATTORNEY GENERAL *on*